

Dear Senators LODGE, Guthrie, Stennett, and  
Representatives CRANE, Armstrong, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Idaho Commission on the Arts:

IDAPA 40.00.00 - Rules of the Idaho Commission on the Arts - Notice of Omnibus Rulemaking -  
Proposed Rule (Docket No. 40-0000-2100).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 11/12/2021. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/10/2021.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



**Terri Kondeff**  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee  
**FROM:** Deputy Division Manager - Katharine Gerrity  
**DATE:** October 25, 2021  
**SUBJECT:** Idaho Commission on the Arts

IDAPA 40.00.00 - Rules of the Idaho Commission on the Arts - Notice of Omnibus Rulemaking - Proposed Rule (Docket No. 40-0000-2100)

#### Summary and Stated Reasons for the Rule

The Idaho Commission on the Arts submits notice of proposed rule at IDAPA 40.00.00 - Rules of the Idaho Commission on the Arts. According to the commission, the rulemaking publishes the rule chapter previously submitted to and reviewed by the Legislature.

#### Negotiated Rulemaking/Fiscal Impact

The commission states that negotiated rulemaking was not conducted "because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare." The commission notes that there is no fee or charge imposed or increased and that no fiscal impact is anticipated.

#### Statutory Authority

The rulemaking appears to be authorized pursuant to section 67-5605, Idaho Code.

cc: Idaho Commission on the Arts  
Michael Faison

#### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director    Kristin Ford, Manager    Keith Bybee, Manager    April Renfro, Manager    Glenn Harris, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

Tel: 208-334-2475  
legislature.idaho.gov

## IDAPA 40 – COMMISSION ON THE ARTS

DOCKET NO. 40-0000-2100

### NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5605, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 40, Rules of the Idaho Commission on the Arts:

**IDAPA 40**

- 40.01.01, *Rules of the Idaho Commission on the Arts.*

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rule being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rule attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Stuart Weiser, Deputy Director, at 208-334-2119 or [stuart.weiser@arts.idaho.gov](mailto:stuart.weiser@arts.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this October 20, 2021.

Stuart Weiser, Deputy Director  
Idaho Commission on the Arts  
9543 W. Emerald Street, Suite 204  
P.O. Box 83720  
Boise, ID 83720-0008  
Phone: 208-334-2119

# IDAPA 40 – IDAHO COMMISSION ON THE ARTS

## 40.01.01 – RULES OF THE IDAHO COMMISSION ON THE ARTS

### 000. LEGAL AUTHORITY.

Section 67-5605, Idaho Code gives the Commission authority to promulgate rules necessary to the discharge of the Commission's duties. ( )

### 001. SCOPE.

These rules contain the provisions for consideration for any grant or a award under the Commission's programs. ( )

### 002. (RESERVED)

### 003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for applicants under the Commission's programs as contested cases pursuant to the provisions of Title 67, Chapter 52, Idaho Code. The Commission provides for internal requests for reconsideration of applications under as described in these rules and program guidelines. ( )

### 004. -- 099. (RESERVED)

### 100. DEFINITIONS.

**01. Applicant.** An individual or organization meeting the criteria set forth in Section 202 of these rules, which has submitted an application for a program offered by the Commission. ( )

**02. Commission.** The Idaho Commission on the Arts. ( )

**03. Program.** The categories for the award or grant of funds or recognition by the Commission described in the program guidelines. ( )

**04. Program Guidelines.** The application, review, award, and use criteria for a program approved by the Commission. ( )

**05. Recipient.** An applicant receiving an award or grant under a Commission program. ( )

### 101. -- 199. (RESERVED)

### 200. PROGRAMS.

The Commission offers programs to stimulate and encourage the study and presentation of the arts. Provisions governing program applications, review, award, and use are set forth in these rules and in the program guidelines located on the Commission's website at <https://arts.idaho.gov/>. ( )

### 201. – 300. (RESERVED)

### 301. FUNDING LIMITATIONS.

The Commission will not provide funding for the activities, costs, or projects set forth in this section. ( )

**01. Excluded Applications.** The following are excluded from consideration for a grant or award: ( )

**a.** Establishment of or contributions to an endowment; ( )

**b.** Fund-raising projects that do not raise funds for the arts; ( )

**c.** Prizes, scholarships, or free tickets; ( )

**d.** Projects or programs to generate or attract audiences; ( )

**e.** The offsetting of personal or organizational debts; ( )

- f.** Activities that are primarily promotional or created for mass distribution including, but not limited to, duplication of compact disks, creation of portfolios, private gallery announcements, self-published books, flyers, brochures, or Internet sites; ( )
- g.** Student exhibitions, anthologies, publications, or performances, unless those activities document an arts education grant; ( )
- h.** Costs associated with any degree or professional certification including, but not limited to, tuition, fees, or teaching materials; ( )
- i.** Projects or activities already completed or documentation of previously completed projects; ( )
- j.** Projects that are primarily recreational, vocational, or religious; ( )
- k.** Projects restricted to an organization's membership; ( )
- l.** Costs for consecutive attendance at annual activities that are routinely within an arts organization's budget including, but not limited to, conferences of the National Assembly of State Arts Agencies, Americans for the Arts, American Folklore Society, or the Western Arts Alliance; ( )
- m.** Pageants, festivals, or celebrations unrelated to arts, ethnic, or cultural activities; ( )
- n.** Journalism; ( )
- o.** Historical or academic documentary film that does not demonstrate significant artistic emphasis, consideration, and distinction; ( )
- p.** Scholarly or academic works; ( )
- q.** Lobbying expenses or political activities; ( )
- r.** Hospitality expenses including, but not limited to, food and drink; ( )
- s.** Capital expenditures for individuals; or ( )
- t.** Writing intended for youth. ( )

**302. APPLICANTS.**

- 01. Categories of Applicants.** Applicants must fall within one (1) of the following categories: ( )

  - a.** An individual artist or arts administrator meeting the criteria set forth in Subsection 302.02, of this rule, who is submitting an application based solely on the applicant's work. ( )
  - b.** An organization meeting the criteria set forth in Subsection 302.03 of this rule. ( )
  - c.** A collaboration of individual artists represented by an individual. The application must identify and be signed by the primary individual as the applicant, meet the criteria set forth in Subsection 302.02 of this rule, and accept all legal and contractual obligations of the program. The Commission will consider the applicant as submitting the application and receiving the program award for the purposes of the exclusions related to the number of applications and program awards in this section. ( )
- 02. Requirements for Individuals.** If the applicant is an individual, the applicant must: ( )

- a. Be a citizen of the United States or a permanent legal resident or a refugee. ( )
- b. Be a resident of the state of Idaho for at least twelve (12) months before the date of the application. ( )
- c. Be over the age of eighteen (18) before the date of the application, unless the applicant is an apprentice. ( )

**03. Requirements for Organizations.** If the applicant is an organization, the applicant must: ( )

- a. Have been operating in the state of Idaho for at least twelve (12) months before the date of application. ( )
- b. Be a school, unit of local, county, tribal, or state government, or an organization determined to be tax exempt by the United States Internal Revenue Service whose primary purpose is the production, presentation, or support of the arts. ( )
  - i. Unincorporated organizations may submit an application through another tax-exempt organization as its designated fiscal agent. Service as a fiscal agent does not exclude an organization from applying for programs on behalf of the organization serving as a fiscal agent. ( )
  - ii. Tax-exempt organizations must have an independent board of directors empowered to formulate policies and be responsible for the governance and administration of the organization, its programs, and its finances. ( )
- c. Compensate artists and arts administrators at no less than the legal minimum wage or in accordance with a written agreement. ( )

**04. Application and Funding Limits.** The program guidelines may include a limit on the number of program applications, the amount of funding, or both for applicants and recipients of grants and awards. ( )

**303. APPLICATIONS.**

**01. Application Forms and Contents.** The program guidelines will include the application format, length, contents, work samples, and supporting materials requested by the Commission for the applicable program. The Commission may reject applications not satisfying the program guidelines. ( )

**02. Submission.** Applications shall be delivered to the Commission by the method and due date specified in the program guidelines. ( )

**03. Ownership and Return of Applications.** Upon submission, applications become the property of the Commission. The return of work samples is at the risk and expense of the applicant. The Commission may require pre-payment of packing and shipping costs for the return of work samples. ( )

**304. DISQUALIFICATION.**  
The Commission may disqualify an applicant for any one (1) of the following: ( )

**01. Non-Compliance with Rules or Program Guidelines.** Failure to satisfy the requirements of these rules or the requirements in the program guidelines. ( )

**02. Application Information, Samples, and Supporting Materials.** Failure to provide information requested on the application form, to submit work samples or other supporting materials requested by these rules or program guidelines, or to sign the application. ( )

**03. Prior Non-Compliance.** Failure to comply with the terms and conditions of a prior grant or award to the applicant by the Commission. ( )

**305. PROGRAM GRANTS AND AWARD AMOUNTS.**

Program grants and awards are subject to funds availability and may be awarded in any amount at the discretion of the Commission. The Commission may decline to accept applications or to issue an award or grant for any program due to a lack of funding. At the discretion of the Commission, a recipient may receive travel expense reimbursement. ( )

**306. FINAL REPORTS.**

Recipients must submit a final report to the Commission as specified in the program guidelines. ( )

**307. DELEGATION.**

The Commission may delegate its roles, responsibilities, or duties under these rules to Commission staff, artists, or community volunteers including, but not limited to, the review of program applications. ( )

**308. RECONSIDERATION OF APPLICATIONS.**

Applicants may request reconsideration of an application within thirty (30) days of a program grant or award notification issued by the Commission. Requests for reconsideration must be in writing and filed with the executive director of the Commission at the Commission's offices. The Commission considers requests for reconsideration where the applicant demonstrates a misinterpretation or misunderstanding of the application, work samples, or supporting materials. The Commission will not consider a request for reconsideration based upon incomplete or incorrect applications, work samples, or supporting materials. ( )

**309. -- 999. (RESERVED)**